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Ontario. The Consolidated Hearings Act, 1981.
CH-91-03
DECISION ON MOTIONS BROUGHT BEFORE THE JOINT BOARD ON
JUNE 1, 1992. IN THE MATTER OF A PROPOSAL BY RECLAMATION
SYSTEMS INC. (RSI), TO ESTABLISH, OPERATE AND CLOSE A

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The Joint Board
THE CONSOLIDATED HEARINGS ACT, 1981

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CH-91-03

DECISION ON MOTIONS BROUGHT BEFORE THE JOINT BOARD ON JUNE 1, 1992.

IN THE MATTER OF a proposal by RECLAMATION SYSTEMS INC. (RSI), to establish, operate and close a solid waste disposal site in the Acton Quarry, owned by United Aggregates Limited and located on lands described as Part of Lot 23, Concession 3, and Parts of Lots 23 and 24, Concession 4, Town of Halton Hills, in the Regional Municipality of Halton.

BEFORE:	Mary G. Munro	-	Chair
	S. Wilson Lee	-	Member
	James G. Robb	-	Member

DATED at TORONTO this 16TH DAY of SEPTEMBER, 1992.

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LIST OF ACRONYMS

ARA	-	*Aggregate Resources Act*
CAA	-	*Conservation Authorities Act*
CHA	-	*Consolidated Hearings Act*
EAGLE	-	Ecology Awareness Group Landscape and Environment
EA	-	Environmental Assessment
EAA	-	*Environmental Assessment Act*
EAB	-	Environmental Assessment Board
EPA	-	*Environmental Protection Act*
FOAD	-	Furiously Opposed to the Acton Dumpsite
LRIA	-	*Lakes and Rivers Improvement Act*
MNR	-	Ministry of Natural Resources
MOE	-	Ministry of the Environment
NEC	-	Niagara Escarpment Commission
NEPDA	-	*Niagara Escarpment Planning and Development Act*
OMB	-	Ontario Municipal Board
OWRA	-	*Ontario Water Resources Act*
POWER	-	Protect Our Water & Environmental Resources
RSI	-	Reclamation Systems Inc.
UAL	-	United Aggregates Limited

DECISION ON MOTIONS BROUGHT BEFORE THE JOINT BOARD ON JUNE 1, 1992

Public Hearing regarding a proposal by RECLAMATION SYSTEMS INC. (RSI), to establish, operate and close a solid waste disposal site in the Acton Quarry, owned by United Aggregates Limited and located on lands described as Part of Lot 23, Concession 3, and Parts of Lots 23 and 24, Concession 4, Town of Halton Hills, in the Regional Municipality of Halton.

IN THE MATTER OF the *Consolidated Hearings Act*, R.S.O. 1990, c. C.29, as amended;

AND IN THE MATTER OF the *Intervenor Funding Project Act*, R.S.O. 1990, c. I.13, as extended by Proclamation by the Lieutenant Governor dated March 11, 1992;

AND IN THE MATTER OF the *Environmental Assessment Act*, R.S.O. 1990, c. E.18, as amended, by virtue of the fact that the proposed undertaking has been designated as an undertaking to which this Act applies;

AND IN THE MATTER OF the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, for a provisional Certificate of Approval;

AND IN THE MATTER OF the *Niagara Escarpment Planning & Development Act*, R.S.O. 1990, c. N.2, as amended, for a Development Permit in order to carry out the proposed undertaking. In addition, RSI may require an amendment to the Niagara Escarpment Plan;

AND IN THE MATTER OF the *Ontario Water Resources Act*, R.S.O. 1990, c. 0.40, as amended, for approvals for the storage, handling, treatment and discharge facilities for groundwater and leachate;

AND IN THE MATTER OF the *Planning Act*, R.S.O. 1990, c. P.13, as amended, for an amendment to the Official Plans of the Regional Municipality of Halton and the Corporation of the Town of Halton Hills, to bring the respective Official Plans into conformity with the Niagara Escarpment Plan. In addition, United Aggregates Limited, the registered owner of the subject lands, may require a severance of the lands to be occupied by the waste disposal operation and ancillary facilities;

AND IN THE MATTER OF Section 34 of the *Regional Municipality of Halton Act*, R.S.O. 1990, c. R.11, as amended, for consent of the Regional Council to carry out the proposed undertaking. The *Regional Municipality of Halton Act* has been added to the schedule under the *Consolidated Hearings Act*, R.S.O. 1990, c. C.29, with respect to this proposed undertaking by O. Reg. 784/91;

AND IN THE MATTER OF the *Conservation Authorities Act*, R.S.O. 1990, c. C.27. Under O. Reg. 655/89 and O. Reg. 253/89 enacted by the Credit Valley Conservation Authority and the Halton Region Conservation Authority, respectively, the consent of one or both Conservation Authorities may be required for the storage, handling and discharge of storm water from the property. The *Conservation Authorities Act* has been scheduled to the *Consolidated Hearings Act* with respect to this proposed undertaking by O. Reg. 781/91;

AND IN THE MATTER OF the *Lakes and Rivers Improvement Act*, R.S.O. 1990, c. L.3, as amended, for approvals which may be required in order for RSI to carry out the proposed undertaking and to construct, if needed, a dam on a lake or river relating to the storage, handling and discharge facilities for groundwater and treated effluent from the leachate treatment plant. The *Lakes and Rivers Improvement Act* has been scheduled to the *Consolidated Hearings Act* with respect to this proposed undertaking by O. Reg. 782/91,

AND IN THE MATTER OF the *Aggregate Resources Act*, R.S.O. 1990, c. A.8, as amended, for an amendment to the licence issued to United Aggregates Limited in respect of the Acton Quarry under the provisions of the *Aggregate Resources Act* (formerly the *Pits and Quarries Control Act*) to enable the proposed undertaking to be carried out. The *Aggregate Resources Act* has been scheduled to the *Consolidated Hearings Act* with respect to this proposed undertaking by O. Reg. 783/91.

BEFORE:	Mary G. Munro	-	Chair
	S. Wilson Lee	-	Member
	James G. Robb	-	Member

APPEARANCES

Richard Hassard	-	for Reclamation Systems Inc.
Michael Jeffery		

Alison Hall	-	for the Ministry of the Environment and Ministry of Natural Resources
Stephen J. D'Agostino Jeffery Wilker	-	for the Town of Halton Hills
Blair S. Taylor	-	for the Regional Municipality of Halton
Peter Pickfield	-	for Protect Our Water & Environmental Resources (POWER)
Douglas G. Edward	-	for Furiously Opposed to Acton Dumpsite (FOAD)
Martin Campbell	-	for the Halton Region Conservation Authority
John Minns	-	for Noel Duignan, MPP for the Riding of Halton North
Patricia Woode	-	for Ecology Awareness Group Landscape and Environment (EAGLE)
Dr. Leonard Landry	-	on his own behalf
Paul Neelands	-	on his own behalf
Douglas C. Young	-	on his own behalf

REASONS FOR DECISION OF MARY G. MUNRO AND JAMES G. ROBB

1. Background

Reclamation Systems Inc. (RSI) filed its first Notice to the Hearings Registrar, pursuant to section 3 of the *Consolidated Hearings Act* (CHA), on July 12, 1991. An amended Notice was filed on February 19, 1992.

RSI submitted an Environmental Assessment (EA) of its proposed undertaking in February 1989. This Assessment comprised seventeen volumes of documentation which were circulated to Government review agencies. Subsequently, the Environmental

Assessment Branch of the Ministry of the Environment (MOE) received comments from these agencies. RSI prepared a three volume Addendum to respond to these comments and to describe additional work it had undertaken. The Addendum was filed with the MOE in September of 1990.

The Government Review (the Review) of the RSI Environmental Assessment was completed in November 1991 and Notice of Completion of Review pursuant to the requirements of the *Environmental Assessment Act* (EAA) was given to the public on November 20, 1991. The period provided for public comment on the EA and the Review was sixty days.

2. The Motions

At the commencement of the preliminary hearing on June 1, 1992, the Joint Board identified the parties and proceeded to entertain five motions, all of which challenged the Board's jurisdiction to hear, determine and decide on the matters placed before it by the proponent, RSI, in its Notice to the Hearings Registrar pursuant to section 3 of the CHA. Although the motions differed, their central theme was that these matters had not been brought to a stage where a hearing before a tribunal is required or may be required under the statutes drawn into the Consolidated Hearings process by the RSI Notice.

In advance of the preliminary hearing, the Board received a Notice of Motion from each of three potential parties: the Town of Halton Hills (the Town), the Regional Municipality of Halton (the Region) and a citizens' organization named Furiously Opposed to the Acton Dumpsite (FOAD). At the commencement of the hearing, motions were filed by Dr. L. Landry and by another citizens' organization named Ecology Awareness Group Landscape and Environment (EAGLE).

For ease of reference, copies of the five motions are attached as Appendix A.

The Town, the Region, FOAD and RSI filed affidavits and supporting documentation. Although Dr. Landry and EAGLE did not file affidavits, EAGLE provided certain documents and letters related to its motion.

As the Town's motion, which was heard together with that of the Region, was the most comprehensive, it will be considered first in these Reasons for Decision.

3. Submissions Regarding the *Consolidated Hearings Act*

The submissions regarding the *Consolidated Hearings Act* can be summarized as follows:

3.1 Town and Region:

3.1.1 Although the Joint Board has the jurisdiction, pursuant to the CHA, to hold a hearing, it does not have the jurisdiction to deal with the collateral matters of the specific approvals sought by RSI and described in its Notice to the Hearings Registrar. The Board has the jurisdiction to make findings of fact and law with respect to these collateral matters without taking jurisdiction of the hearing.

3.1.2 In order for the Board to have jurisdiction to hear, determine and decide these matters, there must be compliance with section 2 of the CHA which states:

> This Act applies in respect of an undertaking in relation to which more than one hearing is required or may be required or held by more than one tribunal under one or more of the Acts set out in the Schedule or prescribed by the regulations.

3.1.3 The state of the applications and the matters before the Board is so incomplete and inadequate that the Board is unable to conclude that there are applications before it which could trigger a hearing in accordance with the requirements of section 2. The proponent must file real applications with the agencies required to consider the applications pursuant to the statutes drawn into the Consolidated Hearings process.

3.1.4 There are three levels of error in the materials before the Board:

(a) RSI filed no applications with respect to three matters. Where an application has not been filed there is no possibility that a hearing "may be required". Therefore, according to the provisions of section 2, the CHA does not apply and the Joint Board does not have the jurisdiction to deal with these matters.

(b) RSI filed applications devoid of detail except for a referral to explanatory notes which were themselves inadequate. These applications cannot be considered to be real applications and, therefore, it is not possibile that a hearing "may be required". Accordingly the provisions of the CHA do not apply and the Joint Board does not have jurisdiction to deal with these matters.

(c) RSI filed applications with insufficient detail to allow an evaluation of the proposal in the context of the standards and criteria of the scheduled statutes. Where RSI has filed applications with insufficient detail to allow the required processing, it is not possible that the application would result in a hearing. If there is no possibility of a hearing, the CHA does not apply and the Joint Board does not have jurisdiction to deal with these applications.

3.1.5 Only when jurisdiction has been established pursuant to section 2 is a proponent entitled to file the Notice to the Hearings Registrar required by subsections 3 (1) and (2) of the CHA, which state:

> (1) The proponent of an undertaking to which this Act applies shall give written notice to the Hearings Registrar.
>
> (2) A notice under subsection (1) must specify the general nature of the undertaking, the hearings that are required or that may be required or held, and the Acts under which the hearings are required or may be required or held.

3.1.6 Subsection 5(2) of the CHA limits the Joint Board's jurisdiction to that of the underlying jurisdiction of the tribunal that would have had the jurisdiction to hold a hearing but for the Consolidated Hearings process.

3.1.7 Section 5(7) of the CHA imports the standards and criteria to be considered under the Acts specified in the section 3 Notice into the body of law to be considered. Therefore, the requirements of the other Acts apply.

3.1.8 Section 7 of the CHA adopts by reference the rules of conduct and practice and procedure with respect to the Acts subsumed by the Consolidated Hearings process. Section 7 of the CHA states:

> 7(1) Subject to subsection (2) and to any rule of conduct or practice or procedure prescribed by the regulations, the notices and the documents that would be required to be given or filed in respect of a hearing by a tribunal shall be given or filed, as the case may be, in the same manner in respect of the joint board hearing by the joint board established in respect of the hearing.
>
> (2) Upon application without notice, a joint board may change the requirements as to filing documents or giving of notice in respect of any hearing in respect of which the joint board has been established if the joint board is satisfied that the change will facilitate the joint board hearing and is not unfair to any person entitled to be heard at or to attend the joint board hearing.

Reference was made by the Region to the Hearing Registrar's File CH-82-07. In that case, the Hearings Registrar notified the applicant that an application must be filed and

dealt with by the Niagara Escarpment Commission (NEC) and an appeal launched to the relevant Minister before the Consolidated Hearings process could begin.

3.1.9 Section 20 of the CHA merely stops any person acting under any statute from holding a hearing with respect to the subject matters of the section 3 Notice to the Hearings Registrar. Section 20 states:

> **20**(1) Where a proponent of an undertaking gives notice under section 3 to the Hearings Registrar, no person acting under any Act specified in the Schedule or prescribed by the regulations shall hold in respect of the undertaking a hearing specified in the notice or in any amendment to the notice.
>
> (2) Subsection (1) does not apply where the notice under section 3 is withdrawn in accordance with section 6. 1981, c. 20, s. 20.

3.1.10 The CHA simply sets out a procedure and contains nothing to stop the normal operation of the statutes caught in this jurisdiction. The CHA does not refer to processing because the drafters of the legislation did not intend to do more than consolidate the hearings. The CHA process is not proponent-driven and the Act does not give the proponent special status or discretion.

3.1.11 Subsection 6 (1)(a) of the EAA does not prohibit the normal processing of applications by government agencies. Subsection 6(1)(a) states:

> **6**(1) Where a proponent is required under this Act to submit to the Minister an environmental assessment of an undertaking,
>
> (a) a licence, permit, approval, permission or consent that is required under any statute, regulation, by-law or other requirement of the Province of Ontario, an agency thereof, a municipality or a regulatory authority, in order to proceed with the undertaking shall not be issued or granted;

In particular, a municipality may adopt an Official Plan Amendment by passing a by-law. By adopting such a by-law, the municipality is performing a legislative process and putting its position before the Minister of Municipal Affairs who may or may not approve the Plan Amendment or may refer it for a hearing.

3.1.12 The lack of applications and the submission of inadequate applications is prejudicial to the municipalities and to the public because they are deprived of the protection provided by regular processing.

3.1.13 The Joint Board has not received the requisite referrals from: the Minister of the Environment pursuant to the EAA, the Minister of Municipal Affairs pursuant to the *Planning Act*, Minister of Natural Resources pursuant to the *Aggregate Resources Act*

(ARA) and the *Lakes and Rivers Improvement Act* (LRIA), and the Director of Approvals of the MOE pursuant to the *Ontario Water Resources Act* (OWRA) and the *Environmental Protection Act* (EPA). Consequently, the Board not only does not have jurisdiction to hear and decide on these matters, it also does not have the benefit of the Ministers' advice regarding the subject matter of the referrals or the results of their canvassing of the municipalities or other agencies.

In this case, because of the RSI approach, the Minister of Municipal Affairs has not had an opportunity to evaluate the planning implications and the possible provincial interest in the proposed undertaking. In fact, the Minister of Municipal Affairs was not given notice of the hearing and is not represented at these proceedings.

3.2 FOAD:

Mr. D. Edward, counsel for FOAD, supports the municipalities' position and, in particular, he submits that the Board's jurisdiction emanates from section 2 of the Act and not from section 3 as suggested by RSI. In Mr. Edward's view, section 3 creates a mandatory procedural function.

In addition, Mr. Edward argues that as a result of the lack of process, some interests may not be represented at the hearing.

3.3 Halton Region Conservation Authority:

Counsel for the Halton Region Conservation Authority submits that the application filed with the Halton Region Conservation Authority is inadequate and refers erroneously to the Black Creek watershed. His client has not been given sufficient information to understand the RSI proposal, the effects on the watershed of the water diversion and the details of the required water-taking permit. Although the Halton Region Conservation Authority does not press the jurisdictional issue, it believes the remedy to its concerns would be to require RSI to file a new notice to the Halton Region Conservation Authority.

3.4 POWER:

Mr. P. Pickfield, counsel for Protect Our Water & Environmental Resources (POWER), submits that the Joint Board does not have jurisdiction under any of the statutes except

perhaps the *Niagara Escarpment Planning and Development Act* (NEPDA) where the application was filed but the statutory process did not occur.

In addition, he maintains that RSI's attempt to insert the planning process into the hearing process will prejudice his clients by removing their opportunities to participate in the planning process. RSI's approach precludes, for instance, the government review process under the *Planning Act* which provides the public with an independent opinion before the hearing occurs.

3.5 Ministries of Environment and Natural Resources:

Ms. A. Hall, counsel for the MOE and MNR, indicated her support for the motions insofar as they pertain to the lack of applications and to applications that are so deficient as to be useless as a basis for the approval sought. In these cases, Ms. Hall agrees that the Board has nothing before it to consider and, therefore, it cannot hear the matter.

Although Ms. Hall disagrees with the RSI approach, she does not support the contention that the Board lacks jurisdiction because applications have not been processed to the point of requiring a hearing under their own individual statutes.

Ms. Hall argues that sections 2 and 3 combine to trigger a joint board's jurisdiction, replacing the jurisdiction of other decision-makers, including that of the Minister of the Environment under the EAA, the Director under the OWRA, and all decision-makers under the underlying statutes. Once a Notice is given under section 3, it is mandatory under section 4 that the matter be referred to a joint board. The joint board has the authority and the duty to hold a hearing on matters that could be considered at the hearings specified in the Notice to the Hearings Registrar. Thereafter, the joint board assumes responsibility and control over the hearing and its procedures. If, as others argue, it is the hearing requirements of other statutes that result in the Board's jurisdiction, the CHA would apply only where one or more hearings are required, not "may be required". A benefit of the consolidation of hearings is that the proponent need not wait until all matters are brought to the hearing stage before the Board can consider the applications.

Ms. Hall refers to section 5(2) which describes the jurisdiction of a joint board to include not only the decision-making powers of each tribunal that would have had the authority

to conduct a hearing pursuant to the underlying statutes, but also the power to make decisions that might have been made by any body or person after the holding of the hearing. For example, a joint board steps into the decision-making role of the Minister and Cabinet for the Plan amendment regime set out in the NEPDA whereby the Minister and ultimately the Cabinet decide whether an amendment should be approved, after the Hearing Officer has conducted a hearing and made recommendations to the NEC and the Minister.

In Ms. Hall's view, the CHA provides the authority and the mechanisms for a joint board to direct the process related to scheduling, notice, filing of documents and intermediate steps. Ms. Hall relies, for this opinion, on section 5(3) of the CHA which states:

> (3) A joint board may defer any matter or part of any matter,
>
> (a) to be heard and decided under this Act by the joint board or another joint board at another date; or
>
> (b) to be decided by the tribunal, body, or person that, but for this Act, would have a power, right or duty to deal with the matter or part under any Act set out in the Schedule or prescribed by the regulations.

Ms. Hall contends that subsection 5(3) not only provides a joint board with the power to defer to the party that has the power to hear and decide the matter, but also, in subsection 5(3)(b), the joint board is given the power to defer to a person or body that has the authority to deal with the matter. Therefore, Ms. Hall submits, the joint board has control over the intermediate steps between the filing of an application and the hearing under another statute. It can defer a matter back to any agency [for example, a municipality or conservation authority] and direct it to undertake the process required by its legislative mandate.

In Ms. Hall's view, the requirements of the CHA are not intended to affect the reviewing roles of agencies receiving the applications. Ms. Hall, however, contends that if a hearing comes along and the processing requirements of the underlying statutes have not been fulfilled, a joint board can canvass the agencies to find out what processing should occur. The board can then decide which processes will result in a properly informed

agency coming before the board and may reduce overlap and duplication in the processing procedures. The proponent can bypass the statutory processes if the board agrees they need not occur.

Ms. Hall does not take exception to RSI's written suggestion to various planning bodies that a decision is not required and that CHA section 20 prohibits the holding of a hearing. Agencies, however, should proceed with circulating the application, receiving comments and forming an opinion, as required by the relevant statutes.

Ms. Hall suggests that this Joint Board has three options:

1) to dismiss the applications without prejudice to RSI to return when the applications have been completely filed. RSI would have to resubmit its Notice, but not necessarily the EA, to the Hearings Registrar.

2) to adjourn until the applications have been completed and filed and the statutory procedures have been followed. The Board should canvass the agencies regarding the statutory procedures to determine what is yet to be done and to eliminate duplication of process.

3) to defer all matters to itself except the NEPDA applications for a development permit and a Plan amendment. The NEPDA matters involve a first planning principle which is whether the RSI undertaking should be located in the Niagara Escarpment Plan area. These matters could be considered a threshold issue.

Ms. Hall refers to section 2 of Ontario Regulation 688/81 (O. Reg. 688/81), a regulation made pursuant to section 19 of the CHA. Section 2 states:

> **2.** Where a Notice to the Hearings Registrar has been given under subsection 3(1) of the Act concerning an undertaking for which an approval is required under the *Environmental Assessment Act*, the hearing by the joint board shall not be commenced before the expiration of the period established under subsection 7(2) of the *Environmental Assessment Act*.

In Ms. Hall's opinion, although sections 2 and 3 of the CHA remove the requirement for other decision-makers to refer a matter for a hearing, this section of the Regulation prolongs the responsibilities of the Minister of the Environment to direct the EAA processes until the expiration of the period provided for public comment pursuant to subsection 7(2) of the EAA. If it were not for the provisions of section 2 of the

Regulation, the CHA would put all of the issues regarding the circulation of the environmental assessment and the government review into the jurisdiction of the joint board. Ms. Hall submits that section 2 of O. Reg. 688/81 was enacted to forestall potential abuses of the CHA process where proponents might file nominal applications in order to get before the Board.

3.6 P. Neelands:

Mr. P. Neelands, a landowner along 16 Mile Creek, supports the municipalities' motions. Due to the lack of information about the RSI proposal, he is unable to evaluate its effects on his property. He submits that the RSI approach is not supported by the legislation and it deprives the agencies and the public from participation in an open process.

3.7 Niagara Escarpment Commission:

Although Ms. M. Orr, counsel for the NEC, argues that detailed applications are required to comply with the provisions of section 2 of the CHA, she supports Ms. Hall's position that the applications are enough to trigger a board's jurisdiction and that the CHA provides the mechanisms for a joint board to deal with process issues. Ms. Orr agrees with the Ministries' option 2, that this joint board should adjourn these matters until the necessary materials have been provided. The Board could impose time limits for processing as a condition of its order for deferral.

In Ms. Orr's opinion, the provisions of subsection 7(2) provide a joint board authority to streamline the processing requirements. The NEC, however, would want to follow the full process set out in the NEPDA. If anyone, including the proponent, applies under subsection 7(2) for changes to the processing requirements of the underlying statutes, a joint board must provide an opportunity for all interested parties to make submissions.

Ms. Orr submits that RSI cannot rely on its EA to prove its other applications. The underlying statutes involve different criteria and standards to be met and, therefore, the information provided in the EA is insufficient for the Board to evaluate the undertaking in this context.

3.8 D. Young:

Mr. D. Young, a landowner immediately south of the quarry, supports the motions on the grounds that the information provided by RSI is incomplete and unacceptable.

3.9 P. Woode:

Mrs. P. Woode, on behalf of EAGLE and Mr. J. Locke, supports the motions. In particular, she notes that RSI indicated in 1988 that it intended to follow the CHA process and yet, in spite of the length of time that has elapsed, incomplete documentation has been filed.

3.10 N. Duignan:

Mr. J. Minns, on behalf of Mr. Duignan, pointed to deficiencies in the RSI applications and indicated Mr. Duignan's support for the position that the applications are not ready for hearing.

3.11 RSI:

Mr. M. Jeffery, counsel for RSI, submits that, if it is contemplated that more than one hearing might be required, then it is possible to proceed under the CHA. He argues that a joint board acquires jurisdiction when Notice to the Hearings Registrar has been given. There is no requirement to file an application with the approving authorities though it might be prudent to do so. The form of the application is irrelevant, in Mr. Jeffery's opinion, if sufficient information is provided. RSI's EA contains all of the information necessary and forms the basis for the approval of the various applications.

Further, as subsection 4(11) refers to "matters" not "applications", RSI submits that a joint board may deal with a matter without an application. Subsection 4(11) states:

> 4(11) The joint board has the authority and the duty,
>
> (a) to hold a hearing in respect of and to consider the matters that could be considered at the hearings specified in the notice to the Hearings Registrar under section 3; and

(b) to make and issue a decision in respect of matters considered by the joint board.

Mr. Jeffery submits that subsection 5(2) confers jurisdiction upon the joint board to assume the decision-making powers of other decision-makers.

Subsection 6(3) provides that the proponent may amend the Notice prior to the commencement of the hearing and section 6(4) provides that a joint board may amend a Notice after the hearing commences and impose terms and conditions. These sections underscore the flexibility of the CHA and allow matters to be added.

RSI agrees with Ms. Hall that a joint board does not obtain jurisdiction by virtue of referrals from designated Ministers or other officials because a referral is not required for a joint board to have jurisdiction on matters described in the Notice to the Hearings Registrar. The CHA applies to an undertaking where a hearing "may be required". This negates the interpretation that the joint board acquires jurisdiction only on referral because such a referral would only be applicable in the situations where a hearing "is required". Mr. Jeffery argues that the CHA is a powerful statute that removes the Ministers' powers by giving a joint board jurisdiction.

Mr. Jeffery maintains that the provisions of O. Reg. 688/81 present the most convincing arguments that a joint board acquires jurisdiction by virtue of a Notice to the Hearings Registrar.

Where Notice has been given under the CHA, section 2 of O. Reg. 688/81 prohibits the holding of a hearing under the EAA before the expiry of the public comment period mentioned in subsection 7(2) of the EAA. This section of the Regulation implies, in Mr. Jeffery's view, that a joint board would have the jurisdiction to proceed with the hearing before subsection 7(2) of the EAA is satisfied if it were not for the prohibition provided by the Regulation.

Mr. Jeffery also relies on section 3 of the Regulation, which states:

> 3(1) Before the commencement of a joint board hearing, a meeting may be held to make a preliminary determination as to what matters related to the proposed undertaking are in issue between the proponent of the undertaking and the other prospective parties to the hearing and what matters related to the proposed undertaking are not in issue between the proponent and the other prospective parties.
>
> (2) The Hearings Registrar shall give notice of the time and place of a meeting to be held under subsection (1) to the proponent and such other persons as have indicated, in writing, to the Hearing Registrar that they wish to participate in the hearing.

(3) A meeting under subsection (1) may be held by the Hearings Registrar or the joint board or any member of it.

Mr. Jeffery maintains that subsection 3(1) gives a joint board the jurisdiction to conduct a meeting before the commencement of a hearing. Therefore, the board has the jurisdiction without a referral from the Minister, which can only occur after the requirements of subsection 7(2) of the EAA have been fulfilled.

Mr. Jeffery submits that, according to section 20 of the CHA, the Minister cannot hold a hearing after the Notice to the Hearings Registrar has been given. However, pursuant to section 11 of the EAA, the Minister retains the power to order the proponent to carry out more work on its Environmental Assessment until the Notice of Completion of Review has been issued. The Minister can forestall a hearing by not issuing the Notice of Completion of Review.

Mr. Jeffery noted that, because section 1(f) of the CHA defines "person" for the purposes of the Act to include Her Majesty in right of Ontario, section 20 would preclude Ministers from holding hearings.

As to whether the Joint Board may proceed under the provisions of subsection 7(2) of the CHA to change the processing requirements of the underlying statutes, Mr. Jeffery argues this section clearly refers to documents and notices in respect of a joint board hearing. If it were contemplated that a joint board was to be given the power to make changes to the processing requirements of the underlying statutes, section 7(2) would include a requirement for the Board to give notice.

Mr. Jeffery does not find any provision in the CHA to allow a joint board to modify the requirements of other statutes. However, according to subsection 7(3), a joint board may determine its own practice and procedure and can use this provision to ensure that certain things are done. Also, it is within the board's power, under subsection 5(3)(b), to give direction or place conditions on another body or the joint board itself. Municipalities may review or process but this is not a condition precedent to a joint board's acquiring jurisdiction. Deferral, pursuant to subsections 5(3)(a) and (b) and 5(4)(a), may be the only avenue open to a joint board to require that the statutory requirements are met.

Mr. Jeffery contends that the Minister of the Environment and her staff have concluded that there is sufficient material to conduct a hearing. He refers to a letter, dated November 18, 1991, from the Minister to Mr. Jeffery wherein the Minister indicated that she had decided to deny a request from counsel for POWER to issue an Order, under section 11 of the EAA, against the RSI proposal. In her letter, the Minister indicated that she had consulted extensively with MOE legal counsel, the Crown Law Office and MOE staff. She said she believed sufficient material had been submitted by RSI to allow a decision to be made at a hearing and sufficient information to allow a Board to decide upon the effectiveness of the planning process for this proposal. [We note that the

Minister appears to refer in her letter to the sufficiency of information with respect to the EA and EPA and not with respect to other matters requiring approval.]

Mr. Jeffery asserts that, except for the protection that O. Reg. 688/81 gives the Minister under the EAA, all other agencies lose jurisdiction as soon as the Notice to the Hearings Registrar is given if a joint board decides that it wants to conduct a joint board hearing and exercise its powers under subsection 4(11). Mr. Jeffery contends that there is nothing in the Act to prevent a joint board from commencing a hearing anytime after the Notice to the Hearings Registrar has been given. Except for O. Reg. 688/81, there is no statutory prohibition preventing a joint board from going ahead and, therefore, the procedural steps that normally lead to a hearing pursuant to the underlying statutes need not be followed. Although agencies are not precluded from carrying out procedural reviews, consultations, public meetings, etc, a joint board does not have to wait until these processes have been completed.

4. Considerations and Findings: *Consolidated Hearings Act*

We find that it is generally accepted that the purpose of the CHA is to avoid a multiplicity of hearings related to an undertaking. Allowing for a single hearing, before a joint board, of all of the matters related to the undertaking that require approvals pursuant to the statutes included in the Schedule and prescribed by the regulations, avoids the possibility of inconsistent decisions. The Act gives an opportunity to the proponent, government agencies and the public for an efficient, cost-effective and, most importantly, comprehensive approach to evaluating the proposed undertaking.

Having carefully considered the legislation and the submissions of the parties, we find that the CHA is a procedural statute that does not include any provisions to amend or supersede the requirements of the statutes in the Schedule to the Act or prescribed by the regulations, except that a joint board may modify the requirements related to notice of a joint board hearing.

For a joint board to have the jurisdiction to hear and determine a matter related to an undertaking, the proponent must have created the possibility that a hearing "may be required" by filing the appropriate requests for approval pursuant to the underlying statutes. The requests for approval must include sufficient supporting information to fulfill the processing requirements of the statutes.

We believe that we can proceed to hear and determine matters only where RSI has filed a request for approval to the appropriate agency and has provided information sufficient to allow the agency to fulfil its statutory obligations. It is the filing of these materials that creates the possibility that a hearing "may be required".

We have carefully examined the sections of the CHA that relate to the issues raised by the motions. Our conclusions and findings on these parts of the legislation are described below.

4.1 Section 2: Application of the Act:

Section 2 clearly indicates that the Act applies in respect of an undertaking for which more than one hearing "is required" before more than one tribunal. Therefore, it would be straightforward to find compliance with section 2 if there were two good applications, each leading to a hearing before a different tribunal.

The Act also applies to an undertaking for which more than one hearing "may be required" before more than one tribunal. The interpretation of this wording presents a challenge. It is the interpretation of "may be required" that is the nub of the grounds for the motions before us.

The mere possibility that a hearing "may be required" is, in our view, insufficient to bring the matter under the aegis of the Act. We interpret this provision to encompass applications or requests for approval whose processing requirements in the underlying statute may lead to a hearing. This would include applications for which approval might be obtained with or without a hearing as a result of processing. It would also include an application for an appeal from the decision of the body charged with the responsibility of decision-making pursuant to an applicable statute.

Two situations are needed in order that a hearing may be required: (1) a hearing must be a potential part of the approvals process of a statute which is included in the Schedule to the CHA or prescribed by the regulations, and (2) an application must be made to the agency or body that has been given the authority and has the obligation to deal with the application pursuant to the relevant statute. An application for approval may be in the form stipulated by the agency or, if a form is not provided or required, an application may be a written request by the proponent. No matter how the application is couched, it must provide sufficient information to allow the relevant processing requirements to be fulfilled.

If there is insufficient information for the statutory requirements of processing to occur, then the reasonable conclusion is that, according to the statutory regimes, the matter could not progress to the hearing stage.

4.2 Section 3: Notice of Undertaking:

It is clear that section 3 of the CHA requires the proponent of an undertaking to which the CHA applies to give written notice to the Hearings Registrar and, among other things, the notice must specify the hearings that "may be required".

4.3 Section 4: Joint Board:

According to the provisions of section 4, it is mandatory that a joint board be established once the proponent has given written Notice to the Hearings Registrar.

Section 4(11) provides that the joint board has the authority and the duty to hold a hearing on the matters that "could be considered" as specified in the Notice to the Hearings Registrar. We are of the opinion that the matters that "could be considered" are those matters for which an application or a request for approval has been submitted to the agency or body that has the obligation pursuant to the underlying statutes to deal with the matters. The application must have been submitted with sufficient information to allow the legislative requirements for processing to be fulfilled. In the absence of an adequate application or request, we do not believe that the matters can be considered by the joint board.

4.4 Section 5: Hearing and Decision-Making Powers of the Joint Board:

According to subsection 5(1), a joint board must hold a public hearing in respect of the matters in relation to which a hearing is required or may be required or held as specified in the proponent's Notice to the Hearings Registrar. We believe that subsection 5(1) should be given an interpretation that is consistent with our interpretations of the provisions of section 2, 3, and 4 above. The joint board's authority and duty to hold a hearing is limited to the hearing of matters where sufficient information has been provided to allow processing in accordance with the requirements of the underlying statutes so that there is a possibility that a hearing "may be required".

The provisions of subsection 5(2), in our view, give the joint board the power: (1) to make those decisions that a tribunal could make pursuant to the individual statutes, and (2) the power to make those decisions that might be made by any body or person that has the power to make a decision after the holding of the hearing. The pre-hearing processing and decision-making powers of the agencies or bodies obliged to deal with matters before a hearing occurs are not transferred to the joint board by this section or any other provisions of the CHA.

Some of the Acts specified in RSI's Notice to the Hearings Registrar include a provision that a Minister or other official may or shall, under certain circumstances, refer a matter to a tribunal for a hearing. This provision allows the designated Minister or other official to: follow the statutory and government policy regimes for obtaining the views of other levels of government and the public; obtain the technical and scientific advice from government or agency specialists; and consider provincial policy issues, before the referral.

We find that the provisions of the CHA, subsection 5(2), do not give the joint board the power to make decisions on these matters in the absence of the required referral. The joint board is given the power to make a decision that a tribunal would have had the

power to make, but for the CHA process. That tribunal would have jurisdiction to make a decision on a matter, in certain cases, only upon a referral by the designated Minister or other official. Referral by a Minister or other official takes place before the hearing and their referral power is not replaced by the joint board's power to make a decision that might be made by any body or person after the holding of the hearing.

We find that subsection 5(3) provides the joint board with the power to defer matters to be heard and decided under this Act to itself, to another joint board, or to the tribunal, body or person that, except for the CHA, would have the power to deal with matters. We do not find, however, that subsection 5(3) gives a joint board the power to defer matters back to the agencies or bodies who have the obligation to deal with matters before they might progress to a hearing or be resolved without a hearing. We also believe that it would be impractical and unfair for a joint board to interfere with the mandate of the agencies or persons responsible for dealing with the matters at first instance.

We find that subsection 5(7) provides that the standards and criteria set out in the applicable underlying statutes are to be applied by the joint board in making its decision on the undertaking.

4.5 Section 6: Amendment of Notice Given by Proponent:

Subsection 6(3) provides that a proponent may amend an incorrect or incomplete notice by written notice to the Hearings Registrar before the commencement of the joint board hearing. If such an amendment is filed by the proponent, there would be time before the hearing begins for a joint board to give sufficient public notice or to do any other thing necessary to ensure a fair hearing.

The provisions of subsection 6(4) allow a joint board, after the hearing begins, to amend a notice given under section 3, on its own initiative or on the motion of a party to the proceedings. The joint board may impose such terms and conditions and give directions as it considers proper. Although these provisions allow matters to be deleted or added, they do not provide the Board with the authority to add and deal with matters without proper notice or to add and deal with matters for which it does not have the power to make a decision.

4.6 Section 7: Notices and Filing of Documents:

In our view, subsection 7(1) requires that the notices and the documents that are required for a hearing by a tribunal pursuant to the underlying statutes are to be given or filed in the same manner for a joint board hearing.

Subsection 7(2) provides that upon application without notice the joint board may change the documentary or notice requirements described in subsection 7(1) if the joint board is satisfied that any change to these requirements will facilitate the hearing and will not

be unfair to any person entitled to participate in the hearing. We interpret this section to allow a joint board to modify only the requirements for the notices and documents to be filed for the hearing. We find nothing in section 7, or elsewhere in the CHA, that would authorize the joint board to re-legislate the review and processing requirements of the underlying statutes.

4.7 Section 20: Hearings Under Certain Acts:

Where a Notice to the Hearings Registrar has been given section 20 provides that no person acting under any Act specified in the Schedule or prescribed by the regulations shall hold in respect of the undertaking a hearing specified in the notice or in any amendment to the notice. In our view, this section does not preclude the municipality or any agency from conducting the normal processing required by the statutes. For example, a municipality is not precluded from conducting the public meeting required by section 17 of the *Planning Act* for a proposed Official Plan Amendment.

We find that the provisions of this section do not affect the obligations and powers of the designated Ministers or other officials to refer matters for a hearing. The Ministers and other officials who have the duty and authority to make referrals for a hearing under specified circumstances do not themselves conduct hearings. In effect, the referral would be to a joint board established pursuant to the CHA and given the decision-making power of the tribunal that would have had that power but for the CHA process.

The provisions of certain statutes allow the designated Minister or other official to make a decision on a matter without referral to a hearing. Although there is no explicit provision for this eventuality in the CHA, it is reasonable to anticipate that the Minister or other official would refer the matter to a hearing if the matter is controversial and affects the public interest.

4.8 Ontario Regulation 688/81 (O. Reg. 688/81):

Pursuant to section 2 of O. Reg. 688/81, a joint board hearing involving the EAA may not begin before the expiration of the public comment period that follows the publication of the Government Review of the Environmental Assessment.

This regulation was made pursuant to section 19 of the CHA which gives the Cabinet the authority to make regulations with respect to the practice and procedure of joint board proceedings, the forms to be used, the payment of fees, the prescribing of matters and exemptions of undertakings from the provisions of the CHA. We find that section 19 of the CHA does not provide the Cabinet with the authority to remove by regulation the powers of referral given to Ministers or other officials by the underlying statutes.

Further, contrary to the inferences drawn by counsel for the MOE and MNR and counsel for RSI, we find that section 2 of O. Reg. 688/81 does not imply that the CHA process

takes away the referral powers of designated Ministers or other officials. We believe that the purpose of section 2 is simply to emphasize and ensure that the prescribed public comment period is completed before a hearing commences.

We interpret subsection 3(1) of O. Reg. 688/81 as allowing the joint board to conduct a meeting, before the commencement of the hearing, to determine the issues in dispute. This provision enables a meeting to be held even if the period prescribed by subsection 7(2) of the EAA has not elapsed. We believe that subsection 3(1) is consistent with the view that the CHA does not change the pre-hearing requirements of the underlying legislation (since it creates a procedural exception to those requirements).

4.9 Subsection 6(1)(a): *Environmental Assessment Act*:

In our view, section 6(1)(a) of the EAA simply states that the approval of an undertaking subject to the Act must be the first step in the approvals process and other related approvals may not be given before the EAA approval has been obtained. This section does not eliminate the need or the requirements for licences, permits, approvals, etc. pursuant to other relevant statutes nor does it interfere with or preclude the processes required by these other Acts.

The CHA, which was proclaimed more than five years after the EAA was enacted, provides an opportunity for a single hearing regarding all of the matters related to the requirements of the EAA and the requirements of other statutes which apply to an undertaking. We find that the CHA does not remove the obligation to comply with the requirements of any of the statutes named in the Schedule to the CHA or prescribed by the regulations.

5. Submissions Regarding the Applications

As mentioned above, the municipalities submit that there are three levels of error in the RSI applications that result in a lack of jurisdiction for the Board to deal with the matters specified in the Notice to the Hearings Registrar. Specifically, these are:

(1) The first level of error cited by the municipalities is that RSI did not file an application to:

- MNR, pursuant to the ARA, for an amendment to the quarry site plan to allow the waste disposal facility. The site plan forms part of the Class A license held by United Aggregates Limited (UAL) for the Acton Quarry. Further, RSI is not in a position to request such an amendment as only the licensee may request an amendment to its licence. In addition, a site plan amendment to accommodate the proposed waste disposal facility may only be made after the Ministry has approved a revised site plan which UAL filed in March of 1992. This revised site plan was filed in accordance with a requirement of the ARA whereby all

holders of Class A licences must file replacement site plans within four years of the proclamation of the ARA in January 1990.

- the Region, pursuant to the *Regional Municipality of Halton Act*, for its consent to locate a waste disposal site within its boundaries. Although RSI had requested the Region to prepare a draft agreement to this end, the Region had refused on the grounds that the request was premature until the Review of the EA had been released. There has been no application from RSI to the Region since the publication of the Review.

  Although the Region does not have an application form for this type of request, its counsel submitted that RSI should have formally requested the Region's consent by a letter to the Regional Clerk and an appearance before the Regional Council, as consent may only be granted by Council resolution.

- Further, the Region submitted that, pursuant to section 23 of the *Regional Municipality of Halton Act*, RSI must apply for the Region's approval to relocate Regional Road 43.

- to the Land Division Committee of the Region, pursuant to the *Planning Act*, for a severance of the lands to be occupied by the waste disposal operation and ancillary facilities.

With respect to the ARA matters, counsel for MOE and MNR advises that RSI has not filed an amended site plan with MNR and therefore there is no application before the Board. In addition, RSI will require a water-taking permit, pursuant to the OWRA, in order to operate its proposed facility in the UAL quarry lands. An application for a water-taking permit has not been filed.

With respect to the approvals that are required pursuant to the ARA, Mr. R. Hassard submits that the reason there is no application before the Board is that there is no application form. There is, however, a drawing showing the final contours of the landfill site in one of the EA documents (Exhibit 2.6). If these final contours are approved, RSI will require an amendment to the replacement site plans filed by the owners of the quarry.

Mr. Hassard advises that the final contours of the RSI proposal differ from the approved contours in the 1972 Rehabilitation Plan and the contours shown in the replacement site plan filed with MNR. RSI has not filed amended site plans because it wants the replacement site plans approved first. Although the RSI final contour plan is in evidence

as part of the EA document, it is not a replacement site plan within the meaning of the ARA. RSI would be willing to prepare and file an appropriate site plan if the Board so wishes. RSI takes the position that the Joint Board could make the approval of RSI's site plan by MNR a Condition of Approval.

Counsel for the MOE and MNR advises that an application for a water-taking permit has not been received. RSI indicated that it will undertake to discuss this matter with the appropriate Ministry. Although RSI intends to deal with the water-taking permit as a separate matter that is not before the Board at this time, it would like the right to make further submissions to the Board if it becomes necessary to do so.

With respect to the approvals sought under section 34 of the *Regional Municipality of Halton Act*, Mr. Hassard reviewed the history of RSI's attempts to obtain consent from the Region to locate the proposed waste disposal site within its boundaries. RSI tried unsuccessfully to obtain an agreement with the Region in this matter in September 1989 and in December 1989 the Region indicated that further work on an agreement would not occur until the concerns with the EA documentation had been resolved. Later, the Region indicated that it would not be able to proceed until the EA had been approved.

In February 1990, RSI informed the Region that it intended to ask that the *Regional Municipality of Halton Act* be added to the Schedule to the CHA so that the matter of Halton's consent to the waste disposal site could be dealt with at the Joint Board hearing. The actual consolidation of all of RSI's applications or requests for approval occurred in December of 1991 and there has been no subsequent correspondence with the Region. Mr. Hassard takes the position that RSI has demonstrated a reasonable effort to comply with the *Regional Municipality of Halton Act* and, therefore, RSI is entitled to treat the actions of the Regional Council as a refusal to consent and a refusal to agree on the terms and conditions of such consent as provided in section 34 of the Act. He believes that Halton's position, that the agreement should be negotiated with the Region after the Joint Board's decision, is unreasonable; it would result in more delays as there is no time frame within which the Region must react.

RSI did not appeal to the OMB to resolve this matter. Mr. Hassard indicated that if RSI and Halton are unable to agree upon appropriate terms and conditions, under section 34

of the *Regional Municipality of Halton Act*, RSI will present draft terms and conditions to the Board later in the hearing. As there is no application form for the consent which RSI requires from the Region, RSI is not sure how to move this matter forward.

Ms. Hall informed us that an approval under the *Planning Act* is required either for a severance or a lease for a period in excess of 21 years in order that the MOE may be assured that RSI or the quarry owner will be responsible for the waste disposal site in perpetuity.

Mr. Hassard informed the Board that an application for a severance has not been filed because RSI has not decided whether to apply for a severance or to request permission to lease the subject property for a period in excess of twenty-one years. If RSI decides it wants the Board to make an order for a consent, it will file an application prior to the taking of evidence or later if the Board permits. With respect to the Board's jurisdiction to deal with the severance application in the absence of an appeal from a lower tribunal such as the Land Division Committee, RSI takes the position that the Joint Board has the jurisdiction to stand in the place of the Land Division Committee.

Counsel for the NEC has indicated that the severance could not go forward without an amendment to the Niagara Escarpment Plan because it does not include a New Lot Policy for lands designated as Mineral Resource Extraction Area. Mr. Hassard submitted that if RSI agrees with this position, the application for consent, if filed, will reflect this requirement.

(2) The second level of error cited by the municipalities is that RSI filed applications so devoid of detail that they cannot be considered real applications. These applications were made to:

- the MOE, pursuant to the OWRA, for approval of a leachate treatment plant. The municipalities submit that this is of particular importance because of the concerns expressed by the MNR for the serious implications that the proposal will have on the fisheries habitat and the aquatic environment of the receiving stream, Black Creek. In addition, the Approvals Branch of the MOE has expressed serious concerns related to the acceptability of the proposed discharge criteria and to the ability of the proposed leachate treatment plant to meet the discharge criteria.

Although the Ministry's application form requests specific details, the form submitted by RSI refers only to an explanatory note which indicates that it is not possible to file details until approval in principle is obtained under the EAA and other relevant statutes. Also, RSI indicates that the requirements for the approval sought will be dealt with as a Condition of Approval for the undertaking before the Joint Board.

- the Credit Valley Conservation Authority and the Halton Region Conservation Authority pursuant to section 28 of the *Conservation Authorities Act* (CAA). It is submitted that these applications contain none of the technical detail requested by the application forms and refer only to attached Explanatory Notes. These Notes indicate that it is not possible to prepare detailed applications until an approval in principle has been obtained under the EAA and other relevant statutes. RSI indicates that the requirements for the approval sought will be dealt with as a Condition of Approval for the undertaking before the Joint Board.

- the MNR, pursuant to the LRIA. Although section 14 of this Act sets out the requirements of an application, RSI provides only a reference to Explanatory Notes which are similar to those described above with respect to the CAA and the OWRA.

Counsel for MOE and MNR advised that the Approvals Branch of the MOE has taken the position that it is not possible to deal with the OWRA matters separately and as a Condition of Approval by the Joint Board. The Ministry requires a detailed application in order to evaluate the proposed leachate treatment facility. The effluent from the leachate treatment facility will be discharged to Black Creek and the water quality in the Creek is a key issue in the evaluation of the EA and the RSI proposal.

In addition, Ms. Hall told the Board that the RSI application pursuant to the EPA is as sparse as that under the OWRA. The MOE has asked RSI to undertake additional studies and to provide more information. This information has not been forthcoming and, consequently, the Ministry is unable to take a position on EPA matters at the hearing.

RSI refers to the Ministry's comments which are included in the Government Review (Exhibit 4). The Ministry has indicated that it found the proposed undertaking to be technically acceptable in all aspects other than the discharge of treated effluent. RSI's position is that there is ample material in the EA to permit a consideration of the application pursuant to the OWRA. The two critical issues identified by the MOE are whether the proposed discharge criteria are acceptable and whether the proposed leachate

treatment system will be able to meet the discharge criteria. In RSI's view, it would be premature to prepare final plans and specifications until agreement has been reached on these issues.

Mr. Hassard provided examples of decisions by the Environmental Assessment Board (EAB) and joint boards wherein an approval was given under the OWRA for a treatment plant on condition that the final drawings and specifications be approved by a Director or other official.

Further, Mr. Hassard refers to the Minister's comments, in her letter of November 18, 1991, where the MOE technical staff indicated that the [EA] material is adequate to allow a decision to be made under the EPA.

For approvals sought from the Conservation Authorities, RSI's position is that the undertaking is not in the area under the control of the Halton Region Conservation Authority and no adverse effect has been identified. The Credit Valley Conservation Authority acknowledged receipt of the application and the Halton Region Conservation Authority acknowledged that an application has been filed.

RSI believes that the two Conservation Authorities have been provided with sufficient material to permit a decision but this is a decision to be made by the Board after the hearing of evidence. Further, neither of the Conservation Authorities has asked that the CAA be deleted from the Notice to the Hearings Registrar.

With respect to the LRIA, Ms. Hall advises that the application filed by RSI lacks detail as to the nature and location of the structure (an outfall pipe) being proposed. MNR, therefore, is unable to evaluate the application.

Counsel for RSI indicated that RSI has been unable to identify what its responsibilities might be under the LRIA.

(3) The third level of error alleged by the municipalities is that RSI filed applications which provide inadequate detail to meet the requirements of the relevant statutes. These applications were made to:

- the Town and the Region, pursuant to the *Planning Act*, for amendments to their Official Plans. These applications request a redesignation of the subject lands by way of a site-specific, notwithstanding clause to permit a solid waste management facility. For detail, the municipalities are referred to the EA documents.

  Although the letter which accompanied the applications suggested that they need not be processed by the municipalities in the normal course [because the Joint Board would consider them directly], the Town and the Region have begun to process the Official Plan amendments and have requested additional information.

  A letter which accompanied the applications included an indication that RSI expected to request referral to the Ontario Municipal Board (OMB) in the statutory minimal time period [pursuant to section 22 of the *Planning Act*]. RSI, however, has not yet requested such a referral.

- the MOE, pursuant to the EAA. Although the Town and the Region deferred argument on the sufficiency of the EA to FOAD, they did submit that, as the Minister had not referred the EA matters to the Board, the Board does not have the jurisdiction to proceed with EA matters.

RSI submits that the EA documents provide the Town and the Region with all the information required in order to have amendments to their respective Official Plans dealt with at the Joint Board hearing. As the Official Plans of the Region and the Town are required to conform with the Niagara Escarpment Plan, if RSI obtains an amendment to the Niagara Escarpment Plan, approvals of the amendments to the Official Plans must follow.

In its letters to the Region and the Town, RSI asked them not to make a decision on the Official Plan matters or to refer them to a hearing. In taking this action, RSI states it was doing nothing more than suggesting that the municipalities discuss the procedure for dealing with these applications with the Registrar for the Joint Board and with legal counsel at the MOE.

RSI did not request the Minister of Municipal Affairs to refer the Official Plan matters for a hearing because it had determined that referrals were not required. If RSI had requested a referral under the *Planning Act* it would have suggested that a referral is also required under the EAA by the Minister of the Environment. With respect to the EAA matters and the lack of a referral from the Minister, RSI's position is that a referral is not required pursuant to section 4(11) of the CHA.

(4) The Region and the Town did not take a position with respect to the adequacy of the applications pursuant to the NEPDA. However, they submitted that if the Board found it had jurisdiction under some items it would be inappropriate to proceed in view of the possibility of inconsistent decisions and the potential costs of the hearings to the public at large. Those matters should be deferred until jurisdiction is obtained on all of the matters related to the RSI proposal.

Although Ms. Hall suggested that the applications under the NEPDA could be treated as threshold planning issues, she agreed that the NEC would want to know the details of the MOE evaluation of the application for the leachate treatment facility in order to process the applications under the NEPDA.

As described in section 3 above, the NEC takes the position that the EA provides insufficient documentation for the approvals sought under other statutes, including the NEPDA. Although Ms. Orr agrees with counsel for the MOE that the Board can defer the matters with directions as to the processing required, the NEC will want to deal with these applications in the manner required by the NEPDA.

Mr. Hassard noted that RSI has filed an application for an amendment to the Niagara Escarpment Plan and none of the parties has disputed that fact.

6. Considerations and Findings: Applications

Having reviewed the applications that were provided as supporting documentation for the affidavits filed and having carefully considered the submissions made by the parties, we find that:

(a) RSI has not filed applications or appropriate requests for the approvals required by the ARA, the *Regional Municipality of Halton Act* and the *Planning Act*.

The site plan diagrams in the EA document do not constitute a request for an amendment to the quarry site plan.

The correspondence related to the requirements of section 34 of the *Regional Municipality of Halton Act* does not constitute a request for consent. A request for the relevant consent should be placed before the Regional Council. If the

request is denied, RSI can appeal to the OMB and the matter would then be appropriate for consolidation.

A severance or a long term lease application has not been filed with the Region's Land Division Committee in compliance with the procedure stipulated by the *Planning Act*.

(b) RSI has filed only nominal applications for the approvals required pursuant to the OWRA, EPA, the CAA and the LRIA.

The applications on OWRA and EPA matters do not provide any useful information with respect to the proposed leachate treatment facilities. References to the EA and a request that these matters be the subject of Conditions of Approval of the undertaking are not sufficient to constitute applications that may lead to a hearing.

Although other boards may have made the Director's approval of final plans and specifications a Condition of Approval of an undertaking, the MOE has clearly indicated, in this case, that water quality is a key issue and the proposed technology is untested. Therefore, reasonably detailed plans and specifications are needed in order for the Ministry to process the applications and to form an opinion on the proposed works.

With respect to the CAA, we find that an application that does not describe the location, the structures proposed and the possible effects is tantamount to no application.

With respect to the LRIA, the RSI application does not describe the location, the nature of the works or the possible effects. At the time of these proceedings, MNR did not know what was being proposed and RSI did not know what approvals were required.

(c) RSI's applications to the Region and to the Town for Official Plan amendments rely on the contents of the EA for the requisite information. Nevertheless, these municipalities have proceeded to process the applications and have requested RSI to file more information. We find the applications to be inadequate for allowing the processing that might lead to a hearing. RSI's arguments that the Official Plans of the Region and the Town must conform to the Niagara Escarpment Plan do not convince us that appropriate processing of the Official Plan matters is unnecessary.

(d) Where a referral is required pursuant to the underlying statutes, that referral is required pursuant to the CHA. In this case, the required referrals have not been made under the EAA, EPA, OWRA, ARA and the *Planning Act*.

(e) Generally, on the applications or requests for approval, we believe that a proponent cannot simply file an EA and rely on that documentation to provide the information required by other agencies to process the applications pursuant to other statutes. The purpose and requirements of each of the statutes drawn into the CHA process are there to ensure that provincial, municipal and public interests are protected. We find nothing in the CHA to support any other conclusion.

In addition, it appears to us that the effect of this approach is that a true consolidation of hearings may never occur. Instead, if RSI had its way, there would be a hearing only on the EAA matters, consigning the other matters to Conditions of Approval of the undertaking. These matters could then be settled without a public hearing.

(f) With respect to the approvals sought pursuant to the NEPDA, it is not possible to make a finding on the adequacy of the application. It seems clear to us, however, that the NEPDA applications cannot be addressed by the NEC based on the EA documentation alone, nor can these matters be dealt with separately in the absence of the technical advice of the MOE on the adequacy of the proposed leachate treatment facility.

7. General Findings and Conclusions

(1) Given our findings on the legislation and the applications, we have determined that we do not have the jurisdiction to deal with the applications and requests for approval described in the Notice to the Hearings Registrar given by RSI pursuant to section 3 of the CHA, with the possible exception of the approvals required by the NEPDA. Even if the NEPDA applications and the supporting information were found to be sufficient to create the possibility of a hearing, the CHA would no longer apply as there would be only one hearing that might be required.

(2) In light of our findings on the motions brought by the Town and the Region, we do not find it is necessary to deal with the motions presented by Dr. Landry, EAGLE and FOAD.

DECISION

1. Having carefully considered the relevant legislation, submissions, affidavits, and the supporting documentation provided by parties to these proceedings, this Joint Board has determined that it does not have the jurisdiction to hear, determine or decide the matters set out in the Notice to the Hearings Registrar filed by the proponent, dated February 19, 1992.

2. The matter of the costs of these proceedings will be addressed upon receipt of written submissions, each accompanied by a bill of costs with supporting dockets and invoices, by October 7, 1992 from the applicants for costs, upon receipt of submissions from the proponent by October 21, 1992, and upon receipt of reply submissions by the applicants by October 30, 1992.

Recent Environmental Assessment Board decisions on costs have set the following maximum rates for legal counsel: $165 per hour for senior counsel, $145 per hour for intermediate counsel, and $115 per hour for junior counsel. The Board intends to apply these rates unless otherwise persuaded.

DATED at **TORONTO** this **16TH DAY** of **SEPTEMBER, 1992.**

"Mary G. Munro"

Mary G. Munro, Chair

"James G. Robb"

James G. Robb, Member

REASONS FOR DECISION OF S. WILSON LEE

I have had the advantage of reading the reasons of my learned colleagues Ms Munro and Mr. J. Robb, and would allow the motions brought by the Town and the Region as they do. However, there are areas where my emphasis appears to be different. Accordingly, I am obligated to write my reasons.

What gives rise to the motion brought by the Town and the Region are the manner in which the matters before the Board were presented as applications by the proponent and how they had been processed.

From the affidavit evidence presented, it is patently clear that the approach adopted by the proponent regarding these matters was studied and well planned. It has been guided by what it considers as its legal rights under the *Consolidated Hearings Act*.

The centre piece of the applications for the proposed solid waste disposal site in the Town of Acton is the submission of the Environmental Assessment filed on February 7, 1989, which comprises of seventeen volumes of documentary information and analysis. Subsequent to the circulation by the Environmental Assessment Branch and the receipt of comments, RSI filed three volume of addenda which contain its responses and descriptions of additional works undertaken. The government review of the Assessment was completed in November 1991 and Public Notice of Completion of Review pursuant to the *Environmental Assessment Act* was published on November 20, 1991, stating that submissions should be made by January 17, 1992.

Prior to the giving of Notice to the Hearing Registrar pursuant to Section 3(1) of the *Consolidated Hearings Act* in its final form on February 19, 1992, RSI had undertaken some other steps. It had requested and was granted by the Lieutenant Governor in Council a number of matters not forming the subject matter of a Joint Board be designated by regulation for that purpose. These are O. Reg. 781/91, O. Reg. 782/91, O. Reg. 783/91 and O. Reg. 784/91.

With the exceptions to the Environmental Assessment outlined above and the application to amend the Niagara Escarpment Plan pursuant to the *Niagara Escarpment Planning and Development Act*, it had launched a number of applications in a manner similar to each other. These applications are brief and succinct, consisting of notification to the relevant government agencies its intention to proceed to the Joint Board pursuant to the *Consolidated Hearings Act* and a request that the applications not to be dealt with. In some instances, references were made in the Explanatory Note to the Environmental Assessment and, in one case, copies of these documents had been furnished as attachments.

These applications and how they were brought before the Board constitute the basis of attack by the Town and the Region. It was their submission that the *Consolidated Hearings Act* is only a procedural statute, designed to consolidate hearings, which but for the Act, would have to be held in different proceedings or tribunals.

What it does not do, they maintained, is a wholesale transfer of legal process to the Joint Board or a supersession of what are required to be done pursuant to such underlying statutes.

In their view, the state of these applications and their process show flaws and deficiencies so fundamental and essential that the Board would lack the requisite jurisdiction to hear and determine the matters. It is their submission that the condition precedent for the determination of these matters simply does not exist in law.

They argued that there are matters for which notice has been given by the Hearing Registrar where applications are simply absent. In addition, there are applications which they consider as mere "sham" as they contain no more than token applications with little or no information for the respective lawful authorities to undertake a meaningful evaluation and analysis. Thirdly, some of these matters have not been brought to the Board or caused to be brought by way of an appeal or a referral, which in their view, are necessary and essential.

With the exception of the application for the amendment of the Niagara Escarpment Plan, the Town and Region requested the Board to find that it does not have the jurisdiction to proceed to determine any and all of the matters specified in the Notice of Hearing.

The basis on which counsel for RSI has requested the Board to deny these motions are twofold, which will be addressed shortly in my reasons herein. Where Mr. Jeffery departs from counsel for the municipalities is so far reaching that it deserves some overview analysis. In his submission, the *Consolidated Hearings Act* is an Act which is designed to do more than consolidation of hearings. Amongst its purposes, it is designed to expedite the process for complicated undertakings such as the one before the Board, which might be prohibitively costly and inefficient if multiple approvals had to be contended with. He is of the view that the Act has the effect of activating a hearing sooner than what is considered the wont under the underlying statutes. He contends that the applications need not be perfected pursuant to the underlying statutes. In fact, it is his assertion that the Board does not acquire jurisdiction through the appeals or referrals of those Acts. Its jurisdiction, he argues, comes from the Act itself.

In the consideration of the motions, I would, in the course of the analysis, deal with the following:

I Does the Board acquire its jurisdiction to hear and determine these matters once the Act applies and notice given to the Hearings Registrar?

II Does the *Consolidated Hearings Act* supersede the respective requirements for the applications and process of the underlying statutes?

III What are alleged failings of these applications and whether they are such that the Board is barred from hearing and determining the matters?

[I] The Source of the Board's Jurisdiction

The central argument in support of RSI's position is that the jurisdiction of the Board commences where an undertaking will have the possibility of more than one hearing and notice by the proponent's given to the Hearing Registrar. It does not have to wait for the matters reaching their stage ready for appeals or referrals pursuant to the underlying statutes. The argument is founded on the interpretation of the wording in Sections 2 and 3 of the *Consolidated Hearings Act*. These sections state:

2. This Act applies in respect of an undertaking in relation to which more than one hearing is required or may be required or held by more than one tribunal under one or more of the Acts set out in the Schedule or prescribed by the regulations.

3. (1) The proponent of an undertaking to which this Act applies shall give written notice to the Hearings Registrar.
(2) A notice under subsection (1) must specify the general nature of the undertaking, the hearings that are required or that may be required or held, and the Acts under which the hearings are required or may be required or held.

Mr. Jeffery attaches great weight to the phrase "may be required" in Sections 2 and 3 of the Act. It is the foundation on which his interpretation is derived and upon these words the Board heard learned arguments from both sides.

The second legislative source of Mr. Jeffery's thesis is found in Section 2 of O. Reg. 688/81 enacted pursuant to the *Consolidated Hearings Act*. The section states:

> 2. Where a Notice to the Hearings Registrar has been given under subsection 3(1) of the Act concerning an undertaking for which an approval is required under the *Environmental Assessment Act*, the hearing by the joint board shall not be commenced before the expiration of the period established under subsection 7 (2) of the *Environmental Assessment Act* O. Reg. 688/81, s.2.

In his opinion, this represents a roll back on the general power of the Board to commence a hearing at a point set out in Section 2 of the Act. It is, as he contends, an affirmation of what the words in Section 2 mean. In short, he considers this to be the exception that proves the general rule.

I find that if the legislation intends to confer jurisdiction different from those in the underlying statutes, it would have done so in clearer terms and more precise language. This is important as an administrative tribunal, unlike the courts, is not vested with any inherent powers or jurisdictions. Whatever jurisdictions it possesses, they must flow from statutes, and what the latter may provide.

In addition, I find that the meaning attributed by Mr. Jeffery to Sections 2 and 3 of the Act and Section 2 of O. Reg. 688/81 is somewhat special. In my view, these provisions can be given their ordinary meaning without undue disharmony to the meaning of the Act in its entire context. I find that Sections 2, 3 and Section 2 of O. Reg. 688/81 deal respectively with the application of the Act, the notice and to the Registrar and matters of practice before the Board.

In statutory interpretations, I am mindful of the stated dicta of Lord Atkinson in *Victoria (City) v. Bishop of Vancouver Island* [1921] A.C. 384 at 387:-

> In the construction of statutes, their words must be interpreted in their ordinary grammatical sense, unless there be something in the context, or in the object of the statute in which they occur, or in the circumstances with reference to which they are used, to show that they were used in a special sense different from their ordinary grammatical sense.

I cannot but agree with Mr. D'Agostino that the interpretation of Section 2 of O. Reg. 688/81 given by Mr. Jeffery is a misreading of what O. Reg. 688/81 does specifically and what regulations can do in general. The power to enact regulation pursuant to the Act is set out in Section 19(1) which states:

19.-(1) The Lieutenant Governor in Council may make regulations.

(a) for the conduct of and governing practice and procedure of joint board proceedings;

(b) prescribing forms and providing for their use;

(c) requiring the payment of fees in respect of proceedings before joint boards and prescribing the amounts thereof;

(d) prescribing any matter referred to in this Act as prescribed by the regulations;

(e) exempting any undertaking or class of undertakings or any hearing or class of hearings from the application of this Act or the regulations or any portion or section of this Act or the regulations, and prescribing conditions that shall apply to any such exemption.

I find that none of the enumerated items would allow the Lieutenant Governor in Council to enact regulations to roll back jurisdiction purported to be granted in the Act.

The approach adopted by Mr. Jeffery in the interpretation of these provisions amounts to a self-fulfilling prophesy. It attempts to find proofs for the hypothesis which it has implicitly accepted. In this case, the provision of Section 2 of O. Reg. 688/81 has been used as a verification of what he believes to be true in Section 2.

Furthermore, one can draw a distinction as Mr. D'Agostino has done, between jurisdiction for the Board as whence it is considered properly constituted and whether it can adjudicate matters before it. I find that it is possible to say that the Board has jurisdiction of the former when it does not have the jurisdiction of the latter. In fact, the Town concedes the presence of the former at this hearing. On the other hand, Mr. Jeffery in his submission has not considered such a distinction and consequently, in my view, assumes that a properly constituted Board cannot be barred to determine the matters, regardless of the state of the matters presented before it.

[II] Does the *Consolidated Hearings Act* supersede the application and process requirements of the underlying statute?

The analysis urged upon the Board by counsel for RSI is that the applications at this hearing need not be perfected or processed in like manner as the underlying statutes. In fact, Ministerial referrals would not, pursuant to the argument, be necessary for the hearing to take place. Otherwise, the argument goes, the meaning of the words "may be required" would not be given its full effect.

In this connection, counsel for the two Ministries gave her full support. For all her misgivings of the applications, of which there are many, she remains steadfast in adhering to the central thesis that the Board has no legal impediments to hear and determine the matters. What the Board is free to do, according to her analysis, is to defer some of the matters pursuant to Section 5(3) of the Act if the panel deems necessary.

The Board, she maintains, is not obligated to wait for the appeals or referrals coming to effect, under the underlying statutes. As to the inadequacies of some of these application, she requested the Board to canvass the agencies as to the steps and technical information necessary. In her opinion, the Board can, on the basis of their submissions, direct RSI to undertake or furnish those before the hearing is to be resumed.

I am unable to accept these propositions for the reasons below:-

1. I find that more persuasive authority than what was presented is needed before I can be convinced that all legislative requirements dealing with processes and applications are to be superseded wholesale as soon as the *Consolidated Hearings Act* is to apply to an undertaking. If one were to examine the scheme of the Act as a whole, one has to strain to reach that conclusion. On the other hand, one can reach the converse proposition much more easily. There are provisions within the Act which track our authority from the underlying tribunals as well as obligating us to heed the standards and evaluations set out in the underlying tribunals. Sections 5(2) and 5(7) state:-

   > 5(2) The joint board may make any decision that might be made by a tribunal that has a power, right or duty to hold a hearing in respect of which the joint board hearing was held or that might be made by any body

> or person after the holding of the hearing including but not limited to the granting of any authority or directing the granting or issuing of a permit or licence and the imposition of terms and conditions.
>
> 5(7) The standards and criteria in or under an Act specified in a notice under section 3 that relate to the undertaking specified in the notice apply with necessary modifications in respect of a decision that may be made by a joint board under this Act.

2. The Board has not been presented with an analysis that shows that the rights of notice, appeals and information requirements presently enjoyed by those other than the proponent would be preserved *in toto* or substantially if the legislative requirements are bypassed. There is an assumption, unsubstantiated by any analysis, that the Notice of Hearing by the Registrar would be as efficacious in notifying all parties, providing them with the necessary information, and performing similar if not the same functions under the existing scheme. I am alarmed to learn that the Minister of Municipal Affairs did not receive notice of this hearing. Furthermore, there is an assumption in Ms Hall's argument that the Board has an array of tools at our disposal to overcome such deficiencies in notice or process matters. I am of the view that even if these can be overcome, there is a demonstrable difference between a statutory right and what the Board might do by way of a remedy.

3. The supersession of Ministerial referrals is of particular concern to me as they are the foundations on which appeals are brought to the underlying tribunals. My analysis of these statutes is that not all Ministerial referrals are mandatory. Some of them are within the discretion of a Minister. Any student of statutory interpretation would ask for some expressed authorities before coming to the conclusion that the Minister's discretionary powers can be superseded by the Board.

4. Because a hearing will be brought to the Board earlier than its wont under the underlying statutes, the role of the Board, under such a scheme, would be different from that of an appellant tribunal, exercising its function under the *Statutory Powers Procedure Act*. For instance, what Ms Hall has requested the Board to do by way of directions is, in fact, a supervisory function in disguise. In my view, these functions belong to the authorities that are charged under the underlying statutes to deal with the applications in their inception. I also find that a body that performs a supervisory or regulatory function should not act subsequently as an appellant adjudicative body as such would be contrary to the rule of natural justice.

5. The role of the authorities would also become dubious under this scheme. Mr. Jeffery submitted that they would not be enjoined from performing the tasks of evaluation and and processing the applications, although in fact RSI did request them to grind the process to a halt. Clearly, one would like to know at what point is the authorities to be rendered *functus*. If the Board were to assume jurisdiction and have

complete control over the process prior to referrals, one would think that the authorities in exercising their roles would be irrelevant at best and *ultra vires* at worst.

[III] The failings of the application and how they affect the Board's jurisdiction

I would turn to the examination of the deficiencies in the applications and the absence of the appeals or referrals. I will assess how their inadequacies would affect the Board's jurisdiction to hear or determine these matters. In so doing, my assessment would not be a measure whether they comply in letters with their underlying statutes as in most cases they plainly do not. My yardstick would be whether these alleged failures would be such that the requisite condition precedents for the Board to hear these matters are present, the interests of a party other than the proponent would be prejudicially affected and whether the applications are patently incomplete.

a) The consent to convey pursuant to the *Planning Act*:

The proposed undertaking to operate a site in the Acton quarry of United Aggregate Limited may require a consent to convey pursuant to the *Planning Act*. Although it has been specified in the Notice of Hearing to the Hearing Registrar, the application had not been forwarded to any authority, including the Land Division Committee who is charged under the *Planning Act* to conduct a hearing in the first instance. I find that an application in the form acceptable to the Land Division Committee is essential and necessary, to establish the nature and extent of the proposed consent without which the Board cannot adjudicate. I am mindful that pursuant to Section 20 of the *Consolidated Hearings Act*, the Committee would be obligated to defer the hearing to the Board. Nonetheless, the Committee has functions which are critical to the hearing itself. Pursuant to Section 52(4) of the *Planning Act*, the Committee is to confer with the agencies as prescribed. Their responses and the proposed conditions are essential for the substance of the adjudication. For instance, the Board has been advised that the Niagara Escarpment Commission is of the view that, an amendment of its plan is needed, as the proposed site is located within the Mineral Resource Extraction Area designation for which no new lot would be permitted. All these and more, cannot be ascertained and assessed without a proper application and circulation. The option proffered by RSI that it would file an application prior to the presentation of evidence or subsequently would not be acceptable to me nor would be fair to the other parties.

b) The Official Plan Amendments:

Applications had been filed with the Town and Region for the respective Official Plan amendments by RSI with the request to the municipalities not to take further action in view of the hearing before the Board. Notwithstanding the request, the municipalities continued to deal with these applications. However, no request had

been made to the Minister to refer these before the tribunal or the Board. I would concur with the submission from the counsel for the Town that Ministerial referral is necessary not only because it is good housekeeping. The Ministerial referral signifies, inter alia, the end of a consultative and evaluative process under the *Planning Act* and the commencement of the adjudicative process by a tribunal or the Board. In my view, there are statutory options which cannot in law be superseded by a Notice given to the Hearing Registrar to the Joint Board. For instance, the Minister's right to declare a matter of provincial interest is one such option. I find the Ministerial referral is of vital importance as it is a prerequisite step without which the condition precedents for the hearing of these matters do not exist. The Board was advised that, the Minister of Municipal Affairs had not been apprised of these amendments nor was he given notice. This itself, illustrates the risk of not allowing a legislative process to complete its course.

c) Applications under the *Ontario Water Resources Act*, the *Environmental Protection Act*, the *Lakes and Rivers Improvement Act*, the *Conservation Authorities Act*:

The applications for approval for storage, treatment handle and discharge facilities for ground water and leachate pursuant to Section 24 of the *Ontario Water Resources Act*, a provisional certificate of approval pursuant to Section 27 of the *Environmental Protection Act*, the construction of a dam on a lake or river relating to discharge facilities pursuant to Section 4(1) of the *Lakes and Rivers Improvement Act*, the application to the Halton Region Conservation Authority and the Credit Valley Conservation Authority to construct, place fill or alter water course pursuant to Section 28 of the *Conservation Authorities Act* share one feature in common. They are applications that are nominal in nature, consisting of little or insufficient information for the authority to make a meaningful evaluation. In almost all cases, the authorities were requested by RSI, not to make any decision in light of the Board's pending hearing under the *Consolidated Hearings Act*.

My findings are set out below:

1. In all cases, the authorities in question would have just cause in law to reject the applications on the basis it is incomplete. It would be erroneous for the Board to entertain the appeals or the hearing for which the determination in the first instance would not have been possible.

2. The basis of RSI's approach is to treat the Environmental Assessment as the information source from which authorities are to derive the technical particulars. In the case of the *Ontario Water Resource Act* application, RSI submitted at the hearing a list of concordance for which details of information can be located in the documented Environmental Assessment. I find that it would be inappropriate and unseemly for the Director of the Approval Branch, or indeed the Board to sift

through seventeen volumes in order just to ascertain the features of the application - a task that rightfully belongs to the proponent itself.

3. The assumption RSI had adopted is that these approvals can be made as conditions for approval for the undertaking. Although it may be true that there are precedents, it is an error to assume the subject hearing can be proceeded in like manners, in view of a number of concerns expressed by counsel for the ministries and for the Conservation Authorities.

4. It is also an error to assume that one application is to be pre-eminent and all others can be treated as secondary for which conditions of approval are automatic.

5. Ministerial referral had not been made in any of these cases.

d) The consent required for the *Regional Municipality of Halton Act*:

A consent is required from the Regional Council pursuant to Section 34 of the *Regional Municipality of Halton Act* to establish a waste disposal site within its boundary. It is undisputed that between 1989 and 1991, RSI had attempted to negotiate an agreement with the Region for the purpose of securing a consent, but to no avail. There is no question, in my view, that the Region had engaged in some artful dodges, and managed to delay the process of entering an agreement. What RSI had failed to do is to submit a request to the clerk of the municipality and upon the municipality's refusal or inaction, appealed to the tribunal or the Board. This chain of events is not a mere formality. They are the antecedents without which a tribunal or the Board's jurisdiction to determine the matters would be in doubt. Accordingly, I conclude that we cannot entertain our hearing of this application.

e) Plan Amendment pursuant to the *Aggregate Resources Act*:-

The amendment to the site plan is required to allow the location of a waste disposal facility within the Acton Quarry pursuant to the *Aggregate Resources Act*. Counsel for RSI maintain that the Environmental Assessment document contains reference to the final contours and the Board can incorporate the matter as a condition for approval. I find that the application is singularly absent and no appeal has been made. In my view, the condition precedent for us to determine the matter is absent.

(f) The *Environmental Assessment Act*:

Mr. Jeffery submitted that the letter to the Hearings Registrar dated March 20, 1992 is a letter of transmittal regarding submissions received in response to the Notice of Completion and does not constitute a referral from the Minister pursuant to Section 12(2) of the *Environmental Assessment Act*. I concur with his interpretation of the letter. However, I am of the view that a ministerial referral is vital as her referral would constitute the basis for which our determination of the matter can commence.

For these reasons, I would allow the motion.

DATED at **TORONTO** this **16TH DAY** of **SEPTEMBER, 1992.**

"S. Wilson Lee"

S. Wilson Lee, Member

E.A.G.L.E., G.Gori and C.Woode

CONSOLIDATED HEARINGS - JUNE 1, 1992

Re: Reclamation Systems Inc. proposal for Acton quarry landfill

EAGLE has already forwarded a letter to the Office of Consolidated Hearings stating our concerns which would be addressed at a hearing, should this hearing proceed.

M O T I O N

The motion is for:

An order or determination by the Board that it has no jurisdiction to hear, determine or decide the matters set out in the notice of the Hearings Registrar filed by the Proponent, dated January 3, 1992.

SUPPORTING EVIDENCE:

1. The quarry operated without a valid licence from 1972, since:

   a) When the quarry increased its extraction area from approximately 150 acres (1970 licence) to 575 acres (1972 licence) without public input. Such expansion, without public input, is not acceptable by Law (See court decision "Tovell et al. and Minister of Natural Resources et al., March 28, 1988).

   b) Both the Pits and Quarries Control Act and the Aggregate Resources Act (Art. 8. (2)) state that a site plan must include drawings under the headings:

      -Existing features,
      -Operational Plan, and
      -Progressive Rehabilitation and Final Rehabilitation Plans.

      The 1972 licence does not include the Operational Plan drawing and does not include a Progressive Rehabilitation Plan drawing.

   c) On Nov. 24, 1969 the Township of Esquesing, now part of the Town of Halton Hills, passed by-law 29-69. This froze all existing land uses for any purpose other than agricultural, with minor exceptions. In 1972 the Ministry of Natural Resources granted an expansion to licenced area of approximately 425 acres, contrary to existing legislation approved by the Ontario Municipal Board.

   The RSI proposal requires an amendment to an existing licence.

   A non-existing licence cannot be amended.

2. United Aggregates Limited does not have the right to assign the old 3rd line road allowance to RSI since the agreement (Sept. 12, 1974) between the quarry owners and the Town of Halton Hills states that (Par. 12 (a)):

   "The Owner shall not assign this Agreement without the written consent of the Town".

   Paragraph 10 of the agreement states that the Town has the right to re-establish the road through the quarry.

   The Town, based on the same agreement, must pass a bylaw to give up the right to the road reconstruction. Such a bylaw has never been passed by the Town.

3. The RSI proposal contravenes the spirit of the Law. For many years successive governments have passed legislation with the explicit intent to prevent indiscriminate development and to recognize the uniqueness and the environmental significance of the Niagara Escarpment, as expressed in the following Acts:

   - The Niagara Escarpment Protection Act (1970),
   - The Niagara Escarpment Planning and Development Act,
   - The Conservation Authorities Act,
   - The Lakes and Rivers Improvement Act,
   - The Ontario Water Resources Act,
   - The Environmental Assessment Act,
   - The Environmental Protection Act,
   - The Planning Act,
   - The Regional Municipality of Halton Act,
   - The Aggregate Resources Act,
   - and corresponding Federal Legislation.

P 01

DR. LEONARD LANDRY, M.D.
CITIZEN OF HALTON HILLS

IN THE MATTER OF the Consolidated Hearings Act, R.S.O. 1990, c. C.29, as amended, and the Regulations thereunder;

- and -

IN THE MATTER OF a proposal by Reclamation Systems Inc. (RSI) to establish, operate and close a solid waste disposal site in the Acton Quarry, owned by United Aggregates Limited and located on lands described as Part of Lot 23, Concession 3, and Parts of Lots 23 and 24, Concession 4, Town of Halton Hills, in the Regional Municipality of Halton;

NOTICE OF MOTION

This motion is for an order or determination by the Board that it cannot proceed to hear this matter in that the proponent's supporting material cannot enable a thorough and complete evaluation of the undertaking as it relates to the following areas of concern;

1. Citizens are concerned about the very valid comparison of this site to the Glenridge quarry site in St. Catharines, Ontario. The St. Catharines site is a horror show, an important environmental and medical demonstration of why we cannot bury garbage in a limestone quarry.

2. Citizens are concerned about the reassurances of RSI in particular as they relate to contradictory hydrogeological evidence.

3. Citizens are concerned about the validity of reassurances given by RSI in particular regarding seagulls, and the safety of Black Creek.

. . . 2

4. Citizens are concerned about the potential of aquifer contamination in a scenario similar to that seen in Elmira, Ontario. This is another environmental and medical horror show.

5. Citizens are concerned about false reassurances given by the New Democratic Party of Ontario. In particular, the citizens are alarmed by the contradictory pre and post election positions of Mr. Bob Rae and Ms. Ruth Grier and a possible "breech of promise" regarding this proposal.

6. Citizens are concerned about the application of this community's mandatory recycling by-law as it relates to this undertaking, and the inconsistency between the undertaking and this community's endeavors to minimize waste via Wastewise, a "community resource centre". The citizens claim that the RSI proposal violates the Charter of Rights and Freedom, in particular under the clause emphasizing "equality". The citizens state that the RSI proposal forces them to be treated differently from other Canadian citizens.

7. Citizens are concerned about the implication of Amendment 52 of the Niagara Escarpment Commission, as approved by provincial Cabinet Thursday May 28, 1992 and the expenditure of considerable monies to determine, yet again, that the Niagara Escarpment should be protected from such proposals as that of RSI.

8. Citizens are concerned about the fact that all reviews by all commenting agencies have not yet been received by this Hearing Board:

(i) the International Joint Commission
(ii) the Crombie Commission
(iii) Department of Fisheries and Oceans, Canada

These agencies are currently reviewing this proposal.

9. Citizens are concerned about the Town of Halton Hills' decision <u>not to enforce</u> a municipal by-law regarding the Third Line which would significantly alter this undertaking as the reconstructed Third Line would bisect the quarry. To quote from our legal counsel in this matter, "...willful blindness can never constitute a defense and this, in and of itself, raises many serious questions." (Mr. Tim Danson, Danson, Recht and Freedman, May 27, 1992.)

10. Citizens are concerned about statements made by representatives of RSI wherein they speak of "randomly" checking loads of garbage. The citizens point out that this approach is dramatically different from the Orillia, Ontario decision of February 24, 1992 regarding that city's application for a waste disposal amendment: Conditions of Approval, part 17 states that the goals will be;

a) all waste received at the landfill will be sorted
b) no toxic substances will be landfilled
c) no reusable, recyclable or compostable materials will be landfilled

Indeed the citizens feel that RSI's attitude would have been shamefully exposed in 1907 England in a waterway dispute:

> "According to the judgment of the King's Bench it must not be said,
>
> 'see what a lot of filth other people put into it, and therefore you must excuse us',
>
> because that leads to this logical conclusion, that you must proceed at once against all the people or against none, because everyone could make that answer, and the river would not be purified at all." (Staffordshire County Council v. Seisdon Rural District Council England, 1907. Quoted in Environmental Assessment Board Decision, EP-90-03, dated February 24, 1992.)

It is the citizens' position that the proponent, having had ample opportunity to provide information to alleviate these concerns, and having failed to do so, should be denied further consideration of the proposed undertaking by the Province of Ontario.

IN THE MATTER OF an undertaking by Reclamation Systems Inc. to establish, operate and close a waste disposal site for the purpose of receiving and disposing of solid waste in the Acton Quarry of United Aggregates Limited, located on part of Lot 23, Concession 3, and part of Lots 23 and 24, Concession 4, Town of Halton Hills, in the Regional Municipality of Halton;

AND IN THE MATTER OF the Consolidated Hearings Act, R.S.O. 1990, c. C.29;

AND IN THE MATTER OF sections 30 and 33 of the Environmental Protection Act, R.S.O. 1990, c. E.19;

AND IN THE MATTER OF sections 7(1), 12(2) and 12(3) of the Environmental Assessment Act, R.S.O. 1990, c. E.18;

AND IN THE MATTER OF the Regional Municipalities Act, R.S.O. 1990, c. R.8;

AND IN THE MATTER OF section 34 of the Regional Municipality of Halton Act, R.S.O. 1990, c. R.11;

AND IN THE MATTER OF section 28 of the Conservation Authorities Act, R.S.O. 1990, c. C.27;

AND IN THE MATTER OF sections 10(1), 11 and 14(1) of the Lakes and Rivers Improvement Act, R.S.O. 1990, c. L3;

AND IN THE MATTER OF section 20 of the Aggregate Resources Act, R.S.O. 1990, c. A.8;

AND IN THE MATTER OF sections 10, 12, 13, 14, 24, 25 and 26 of the Niagara Escarpment Planning and Development Act, R.S.O. 1990, c. N.2;

AND IN THE MATTER OF sections 7 and 53 of the Ontario Water Resources Act, R.S.O. 1990, c. O.40;

AND IN THE MATTER OF sections 17, 21, 22, 24, 27, 50 ,52, and 53 of the Planning Act, R.S.O. 1990, c. P.13

NOTICE OF MOTION

The Corporation of the Town of Halton Hills ("The Town"), a municipal corporation pursuant to the Municipal

Act, R.S.O. 1990, c. M.45 which has given notice to the Office of Consolidated Hearings Board of its intention to seek status as a party to the hearing herein, will make a motion to the Consolidated Hearings Board (the "Board") on Monday, the 1st day of June, 1992, at 9:30 a.m., or as soon thereafter that time as the motion can be heard, at the Royal Canadian Legion Hall, Branch 197, 15 Wright Street, Acton, Ontario L7J 2T7.

THE MOTION IS FOR:

1. **WITH REGARD TO JURISDICTION**

A. An Order or determination by the Board that it has no jurisdiction to hear, determine or decide the matters set out in the Notice to Hearings Registrar filed by the Proponent, dated January 3, 1992, and in particular, those matters related to:

(a) the Region of Halton Act, R.S.O., 1990, c. R-11;

(b) the Aggregate Resources Act, R.S.O., 1990, c. A.8

(c) the Planning Act, R.S.O., 1990, c. P.13;

(d) the Environmental Assessment Act, R.S.O., 1990, c. E.18;

(e) the Ontario Water Resources Act, R.S.O., 1990, c. O.40;

(f) the Conservation Authorities Act, R.S.O., 1990, c. C.27;

(g) the Lakes and Rivers Improvement Act, R.S.O., 1990, c. L.3;

(h) the Environmental Protection Act, R.S.O., 1990, c. E.19;

2. **WITH REGARD TO PREMATURITY**

A. in the alternative to the relief set out in section 1, an Order by the Board that the matter is premature for hearing and shall be stayed and/or dismissed by the Board until the Proponent files appropriate applications and supporting materials for review and analysis pursuant to each of the statutes aforementioned; and

B. in the alternative, to the relief set out in section 2(A), an order of the Board requiring the Proponent to amend the Notice to Registrar filed pursuant to section 3 of the Consolidated Hearings Act, by deleting all of the matters relating to the statutes set out in section 1(A).

3. WITH REGARD TO SECURITY FOR COSTS

A. An Order requiring the Proponent to post with the Treasurer of the Supreme Court of Ontario, by cash or certified cheque, a sum sufficient to cover all of the Town of Halton Hills projected costs including legal costs and those costs related to expert witnesses on a solicitor and client scale.

4. GENERAL MATTERS

A. should it be required, an order abridging the time required for service of this motion;

B. costs on a solicitor/client basis; and

C. such other relief as this Board deems just.

THE GROUNDS FOR THE MOTION ARE:

1. JURISDICTION AND PREMATURITY

A. The Proponent has failed to make application for approval under s. 34 of the Region of Halton Act;

B. The Proponent has failed to file an application to make necessary amendments to the Site Plan drawings approved pursuant to an Aggregate Licence held by United Aggregates Limited as is required by section 16(2) of the Aggregate Resources Act;

C. The Proponent has failed to make application for severance notwithstanding its stated intent to do so in the Notice to Hearings Registrar filed pursuant to section 3 of the Consolidated Hearings Act;

D. The Proponent has failed to provide the Town with necessary information required in order to process the application for Official Plan Amendment.

E. The Proponent has failed to follow the statutory procedures set out in the Planning Act in that it has neglected to appeal council's refusal or neglect to deal with its applications for Official Plan Amendment filed as is required by section 22(1) of the Planning Act.

F. The Proponent has failed to provide sufficient detail to permit a proper examination of its application for a Provisional Certificate of Approval pursuant to the Environmental Protection Act;

G. The Proponent has failed to provide sufficient detail to permit a proper examination of its application for a leachate treatment plant pursuant to the Ontario Water Resources Act. Further,the Proponent has failed to follow the requirements of the Director as required by s.

53(2) of the Ontario Water Resources Act, by neglecting to provide appropriate details of the proposed leachate treatment plant;

H. The Proponent has failed to provide sufficient detail to permit a proper examination of its applications for the storage, handling and discharge of storm water pursuant to the Conservation Authorities Act;

I. The Proponent has failed to provide sufficient detail to permit any examination of its application for a dam pursuant to the Lakes and Rivers Improvement Act;

J. The Minister of the Environment has failed to direct a hearing on the Environmental Assessment as required by s. 12(2) of the Environmental Assessment Act;

K. The Director has failed to give notice pursuant to s. 30 and 33 of the Environmental Protection Act;

L. Section 7 of the Consolidated Hearings Act;

M. The Town will be seriously prejudiced in that R.S.I.'s omissions and failures set out herein make it impossible for the Town's advisors to provide advice and analysis with regard to the issues raised therein. As a result, there will be a serious procedural unfairness contrary to the established principles of natural justice. As well, the inadequate state of these applications will cause the length of the hearing to be unnecessarily extended causing serious financial prejudice to the Town;

N. Section 2 of the Consolidated Hearings Act, R.S.O. 1990, c. 29; and

O. Such further and other grounds as counsel may advise and this Board may permit.

2. SECURITY FOR COSTS

A. The Proponent is a shell corporation which has been incorporated for the sole purpose of conducting the proposed undertaking on behalf of its shareholders and others;

B. The Town's projected solicitor/client costs exceed $940,000.00;

C. The Proponent does not have sufficient assets to satisfy an Order for costs in the amount of the Town's anticipated solicitor/client costs;

D. Where a Proponent is put forward as a representative of others and has insufficient assets to satisfy a potential award of costs it is appropriate, in the interest of justice, for the Board to compel the Proponent to file adequate security for costs;

E. Rule 1.04 of the Rules of the Ontario Municipal Board;

F. Rules 1.04 and 56 of the Rules of Civil Procedure;

G. Rule 4 of the Rules of the Environmental Assessment Board;

H. Sections 2 and 7 of the Consolidated Hearings Act, R.S.O. 1990 c. C.29; and

I. Such further and other grounds as counsel may advise and this Board may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

A. The Affidavit of Jeffrey Wilker, filed;

B. The Review of the Proponent's Environmental Assessment and Addendum prepared by the Government of Ontario dated November, 1991; and

C. Such further and other materials as counsel may advise and this Board may permit.

MAY 25, 1992

THOMSON, ROGERS
Barristers and Solicitors
Suite 3100
390 Bay Street
Toronto, Ontario
M5H 1W2

STEPHEN J. D'AGOSTINO
868-3126

Solicitors for the The Corporation of the Town of Halton Hills

JOINT BOARD

FILE No. CH-91-03

IN THE MATTER OF an Undertaking by Reclamation Systems Inc. (RSI) to develop a portion of the Acton Quarry into a solid waste landfill facility to service the Province of Ontario.

AND IN THE MATTER OF The Consolidated Hearings Act R.S.O., 1990 c.C.29, as amended and the regulations thereunder;

AND IN THE MATTER OF The Planning Act, R.S.O. 1990, c.P.13, as amended and the regulations thereunder;

AND IN THE MATTER OF The Regional Municipality of Halton Act, R.S.O. 1990, c.R.11, as amended and the regulations thereunder;

AND IN THE MATTER OF the Aggregate Resources Act, R.S.O. 1990, c.A.8, as amended and the regulations thereunder;

AND IN THE MATTER OF The Regional Municipalities Act, R.S.O 1990, c.R.8, as amended and the regulations thereunder;

NOTICE OF MOTION

The Regional Municipality of Halton, which has given notice to the Office of the Consolidated Hearings of its intention to seek status as a party to the hearing herein, will make a motion to the Joint Board (the "Board") on June 1, 1992 at 9:30 o' clock in the forenoon, or as soon after that time as the motion can be heard at the Acton Royal Canadian Legion Hall, 15 Wright Avenue, Acton, Ontario, L7J 2T7.

THE MOTION IS FOR:

A/ 1. An Order or determination by the Board that it has no jurisdiction to hear or decide matters governed by the Planning Act, in relation to the Proponent's notice to the Board that it may require a severance of a portion of the subject property.

2. An Order or determination by the Board that it has no jurisdiction to hear or decide matters governed by the Planning Act in relation to the Proponent's application to amend the Official Plan of the Regional Municipality of Halton.

3. An Order or determination by the Board that it has no jurisdiction to hear or decide matters governed by the Regional Municipality of Halton Act.

4. An Order or determination by the Board that it has no jurisdiction to hear or decide matters governed by the Aggregate Resources Act.

B/ 1. In the alternative, an Order or determination by the Board that the matter is premature for hearing and that these proceedings and proceedings under the Intervenor Funding Project Act, R.S.O 1990, c.I.13, shall be stayed until the Proponent complies with the statutory requirements of each of the aforementioned statutes.

C/ 1. In the alternative, a case to be stated in writing by the Board to the Divisional Court for its opinion on the following questions of law:

(a) If the Proponent has not applied for consent from Regional Council to sever a portion of the subject property, does the Board have jurisdiction to hear or decide matters governed by Part VI of the Planning Act?

(b) If the Proponent has not submitted a complete application for an amendment to the Official Plan of the Regional Municipality of Halton, does the Board have jurisdiction to hear or decide matters governed by Part III of the Planning Act?

(c) If the Proponent has not made a complete and proper application for the consent of Regional Council to the establishment of a facility for the receiving, dumping and disposing of waste within the Regional Area, does the Board have jurisdiction to hear or decide matters governed by Section 34 of the Regional Municipality of Halton Act?

(d) If neither the Proponent nor United Aggregates Limited has submitted a complete and proper application to the Minister of Natural Resources to amend the licence and site plan as required by the Aggregate Resources Act, does the Board have jurisdiction to hear or decide matters governed by the Aggregate Resources Act?

2. For a stay of these proceedings and proceedings under the Intervenor Funding Project Act, R.S.O. 1990, c.I.13, until such time as the Divisional Court has heard and determined the stated case and remitted it to the Joint Board with the opinion of the Divisional Court thereon.

D/ Costs of this motion on a solicitor/client basis.

E/ Such further and other relief as the Board considers proper.

THE GROUNDS FOR THE MOTION ARE:

1. The Consolidated Hearings Act, R.S.O. 1990, c.C.29;
2. The Regional Municipality of Halton Act, R.S.O. 1990, c.R.11;
3. The Planning Act, R.S.O. 1990, c.P.13;
4. The Aggregate Resources Act, R.S.O. 1990, c.A.8.
5. The Regional Municipalities Act, R.S.O. 1990, c.R.8.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Proponent's Acton Quarry Landfill Environmental Assessment Proposal and supporting documents;
2. Review Under the Environmental Assessment Act prepared by Ministries and Agencies of the Province of Ontario;
3. The Notice of Hearing dated April 16, 1992 issued by the Hearings Registrar;
4. Affidavit of Robert White;
5. Affidavit of Stan Floras.
6. Such further and other materials as counsel may provide and the Board may permit.

DATED at Oakville, Ontario, this 25th day of May, 1992.

O'CONNOR MACLEOD
Barristers & Solicitors
700 Kerr Street
OAKVILLE, Ontario
L6K 3W5 (416-842-8030)
Attention: Blair S. Taylor

Solicitors for the Regional Municipality of Halton

IN THE MATTER OF the Consolidated Hearings Act, R.S.O. 1990, c. C.29, as amended, and the Regulations thereunder;

- and -

IN THE MATTER OF a proposal by Reclamation Systems Inc. (RSI) to establish, operate and close a solid waste disposal site in the Acton Quarry, owned by United Aggregates Limited and located on lands described as Part of Lot 23, Concession 3, and Parts of Lots 23 and 24, Concession 4, Town of Halton Hills, in the Regional Municipality of Halton;

NOTICE OF MOTION

TAKE NOTICE that Furiously Opposed to Acton Dumping (F.O.A.D.), in the process of being incorporated under the laws of the Province of Ontario, which has given notice to the Office of Consolidated Hearings of its intention to seek status as a party to the hearing herein, will make a motion to the Joint Board on Monday, the 1st day of June, 1992, at 9:30 a.m., or as soon after that time as the motion can be heard, at the Acton Royal Canadian Legion Hall, in the Town of Halton Hills, in the Regional Municipality of Halton.

The motion is for:

(1) An Order or determination by the Joint Board that it has no jurisdiction to hear, determine or decide any issues or matters governed by the Environmental Assessment Act, R.S.O. 1990, c. E.18;

(2) In the alternative, a case to be stated by the Joint Board in writing for the opinion of the Divisional Court on a question of law, the said question of law being a two-part question as follows:

(a) Does the report document submitted by the proponent to the Ministry of the Environment fail to meet the requirements of s. 5(3) of the Environmental Assessment Act?

(b) If the answer to question (a) is yes, is it then the case that the Joint Board does not have jurisdiction to hear, determine or decide issues or matters in relation to this proposal that are governed by the Environmental Assessment Act?

(3) In the event that the Order under (1) above is not granted, an Order staying these proceedings until such time as the Divisional Court has heard and determined the stated case and remitted it to the Joint Board with the opinion of the Divisional Court thereon;

(4) Costs of this Motion on a solicitor/client basis;

(5) Such further and other relief as this Honourable Board deems just.

THE GROUNDS FOR THE MOTION ARE:

(1) the Environmental Assessment Act, R.S.O. 1990, c. E.18;

(2) the Consolidated Hearings Act, R.S.O. 1990, c. C.29;

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

(1) The fourteen-volume Report and three-volume Addendum submitted to the Ministry of the Environment by RSI respecting the proposed Acton Quarry Landfill;

(2) Review Under the Environmental Assessment Act, prepared by Ministries and agencies of the Province of Ontario with respect to the proposed Acton Quarry Landfill (EA File No. PR-CO-02);

(3) Interim Guidelines on Environmental Assessment Planning and Approvals, Environment Assessment Branch, July 1989;

(4) Affidavit of Diane van de Valk, sworn the 25th day of May, 1992, filed;

(5) Such further and other material as counsel may advise and this Honourable Board may permit.

MAY 25, 1992.

DOUGLAS G. EDWARD,
Barrister & Solicitor,
24 Queen Street East,
Suite 707,
Brampton, Ontario.
L6V 1A3

(416) 456-3600

Solicitor for F.O.A.D.

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Ontario. The Consolidated Hearings Act, 1981.
CH-91-03
DECISION ON MOTIONS BROUGHT BEFORE THE JOINT BOAR
JUNE 1, 1992, IN THE MATTER OF A PROPOSAL BY RECL

RESOURCE CENTRE
INST. FOR ENVIRON'L. STUDIES
UNIVERSITY OF TORONTO